HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 1173/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT	Chetram, S/o Dashru, Aged about 40 years, R/o village Chandeli, P.S. Keshkal, District Bastar.
		-Versus-
	NON-APPLICANT	State of Chhattisgarh, Through D.M. Bastar.

Present :- Shri K.K. Singh, counsel for the appellant.
Shri Ashish Shukla, Additional Public Prosecutor for the State.

DB: - **HON'BLE SHRI L.C. BHADOO &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

ORAL JUDGMENT
(Delivered on 8th May, 2007)

L.C. Bhadoo, J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 29-10-2001 passed by the Fourth Additional Sessions Judge, Jagdalpur (Bastar), in Sessions Trial No.426/2000 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murder of Lachhu Gond and sentenced him to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo rigorous imprisonment for six months.

2) The case of the prosecution, in brief, is that 3 – 4 days prior to 25-6-2000 Somari Bai along with her husband Lachhu went to the house of Ghassu Ram and stayed there. At that time, Ghassu Ram was not present in his house. Accused/appellant – Chetram came there carrying battle-axe in

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आदेश पत्रक (पूर्वानुबद्ध)

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his hand. Lachhu was sleeping in the courtyard under a tree. His wife Somari was sitting at the door of room. Accused enquired from Somari whether Lachhu is improving or not ? On which, she replied that there is no improvement in his health. Accused asked for liquor & said that he will treat him. Lachhu replied that "you are practicing witchcraft, how you will treat me". On which, accused attacked Lachhu with battle-axe, as a result of which he died spontaneously. Accused fled away from the place of occurrence. The matter was reported by PW-2 Somari in the next day in Police Station Keshkal and gave merg intimation (Ex.P/3). Based on that, First Information Report (Ex.P/2) was registered. The Investigating Officer left for the scene of occurrence, after giving notices to the Panchas, prepared inquest (Ex.P/5) on the body of Lachhu. Accused while in Police custody gave memorandum (Ex.P/5-A) regarding the place where he concealed the battle-axe, in pursuance of that, battle axe was seized under Ex.P/6. Body of Lachhu was sent for postmortem to the Primary Health Centre, Keshkal where Dr. Om Prakash Pillai (PW-6) conducted postmortem & prepared report (Ex.P/7), in which he opined that cause of death was due to excessive blood loss from injuries. Death was homicidal in nature.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Kondagaon, who in turn committed the case to the Court of Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge, Jagdalpur, received the same on transfer for trial.

4) In order to establish the charge against the accused/appellant, the prosecution examined 7 witnesses at the trial. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he

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आदेश पत्रक (पूर्वानुबद्ध)

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denied the material appearing against him in the prosecution evidence. He stated that he is innocent and has been falsely implicated in the case.

5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted & sentenced the accused/appellant as aforementioned.

6) We have heard learned counsel for both the parties.

7) Shri Singh, learned counsel for the accused/appellant, has not disputed homicidal death of Lachhu. Moreover, PW-2 Somari, wife of the deceased, has categorically stated that accused attacked Lachhu with a battleaxe. The evidence of PW-2 Somari is corroborated by the evidence of PW-6 Dr. Om Prakash Pillai, who conducted postmortem on the body of Lachhu. He opined that cause of death was excessive bleeding & death was homicidal in nature. His report is Ex.P/7. Therefore, in view of the ocular & medical evidence, it is established that death of Lachhu was homicidal in nature.

8) As far as involvement of the accused/appellant in the crime in question is concerned, PW-1 Rambati, has turned hostile. Even then, she has established the fact that on the fateful day deceased was at her residence. Accused came to her house carrying battle-axe in his hand. PW-2 Somari in para 2 of her statement stated that accused attacked her husband with battleaxe on his elbow, back portion & neck. Thereafter she informed about the incident to village Patel & Sarpanch. She reported the matter in the Police Station on the next day under Ex.P/2.

9) Shri Singh, learned counsel for the accused/appellant, argued that from the evidence of PW-2 Somari, it is not established that she, in fact,

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witnessed the incident while accused was attacking her husband. He argued that she was sitting inside the room; therefore, it was not possible for her to witness the crime in question.

10) PW-2 Somari, has categorically stated that accused attacked her husband with a battleaxe, as a result of which her husband sustained injuries on elbow, back portion & neck. So far as place of her sitting is concerned, she was sitting in the room, but she was able to watch the place where her husband was sleeping. Even then, accused came & enquired from Somari about the health of the deceased. Therefore, from the evidence of PW-2 Somari it is established that accused attacked the deceased. The evidence of PW-2 Somari stands corroborated, in all material particulars, by the evidence of PW-1 Rambati, in whose presence the incident took place. She has categorically stated that deceased and his wife were at her residence. Accused came with battle-axe to her house where the incident took place. Moreover, the evidence of eyewitness is corroborated by the medical evidence of PW-6 Dr. Om Prakash Pillai. As per the report, there was incised wound on the elbow in the size of 3" x 2" x 2", another incised wound on the left shoulder in the size of 8" x 4" x 3" & incised wound on the neck in the size of 8" x 3" x 3". He has stated that spinal cord was fully cut, the internal part came out of the body and left elbow was separated.

11) In view of the above, we are of the considered opinion that the prosecution has been able to establish the involvement of the accused in attacking & causing death of Lachhu.

12) Shri Singh, learned counsel for the accused/appellant, argued that when accused asked Lachhu to bring liquor so that he can treat him, on which, deceased replied that he is practicing witchcraft, how he will treat him.

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	Accused infuriated on the deceased, all of a sudden, he attacked the deceased. Therefore, the offence against the accused/appellant does not travel beyond 304 Part-II of the Indian Penal Code. 13) On the other hand, Shri Shukla, learned Additional Public Prosecutor for the State, supported the judgment of the trial Court. 14) Having heard learned counsel for the parties, we have perused the evidence as also the injury report and the evidence of Doctor. PW-2 Somari has categorically stated that accused attacked the deceased with the battleaxe, as a result of which he sustained injuries on the spinal cord, neck & elbow. His elbow was separated. Even if the argument advanced by learned counsel for the accused/appellant is accepted as it is, even then the case does not come under the exception 4 to Section 300 of the I.P.C. Merely asking anybody that he is practicing witchcraft does not amount to provocation. Moreover, accused assaulted the deceased continuously three times with deadly weapon i.e. battleaxe. From the manner in which accused assaulted the deceased, it is established that the he assaulted the deceased with intention to cause his death. 15) For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court convicting the accused/appellant under Section 302 of the Indian Penal Code. The appeal being devoid of merit is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**

Gowri